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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/768,310 | 01/30/2004 | James Robert Dupuy | 018778-9224 | 6329 |
| 1131 | 7590 | 01/04/2005 | EXAMINER | |
| MICHAEL BEST & FRIEDRICH LLC 401 NORTH MICHIGAN AVENUE SUITE 1900 CHICAGO, IL 60611-4212 | | | BRAHAN, THOMAS J | |
| | | ART UNIT | PAPER NUMBER | 3652 |

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/768,310 | DUPUY ET AL. |
| | Examiner | Art Unit |
| | Thomas J. Braham | 3652 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to how the actuator link (80) can be claimed as a separate element distinct from the linkage system recited in claim 16. It is part of the linkage system of claim 16 as without the actuator link, the linkage system would be inoperative.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 16, 17, 19, 20, 21, 22, and 26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ringdahl et al. Ringdahl et al shows a wheelchair lift comprising:

a platform (8) for carrying a passenger;

a lifting mechanism (82/84) secured at one end to a vehicle and at the other end to the platform adjacent to an inboard end of the platform for moving the platform (8) between a ground level position, a transfer level position and a vertically-stowed position;

a plate (16) pivotally connected to the inboard end of the platform (8) and moveable between a raised barrier position and a lowered bridging position; and

a linkage system (100A/100b/102/124/126/132) coupled to the plate for moving the plate (16) between the raised barrier position and the lowered bridging position, the linkage system cooperating with the lifting mechanism (82/84) and connected to the platform (8) for moving the platform (8) from the transfer level position to the vertically-stowed position.

The lifting mechanism (82/84) is a parallelogram structure, as recited in claim 17. Rindahl et al has a pivoted actuator link (124) operable to move the plate (16), as claim 19 is best understood. The linkage system has arms (100A and 100B) of unequal length, as recited in claim 20, and a first arm (100A) extending from the lifting mechanism and a second arm (132) extending from the platform, as recited in claim 22. Arm (126) is part of the parallelogram structure, as to have its contact with the linkage system (member 126) move the plate (16) between its positions, as recited in claim 26.

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5. Claims 16-26 are rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. 6,238,169 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by that patent since the patent and the application are claiming common subject matter, with the claims varying only slightly in scope from claim 1 of the earlier patent. Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 2 10 (CCPA 1968). See also MPEP § 804. 6.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington* 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.32 1(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.1301). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.731).

7. Applicant argues in the amendment filed November 8, 2008 that the linkage system of Ringdahl et al does not pivot the barrier as well as move the platform. However, as detailed above, the linkage system of Ringdahl can include both the set of links that pivot the barrier and the set of links that move the platform. The term "linkage system" is broad. The non-treatment of the claims added by the preliminary amendment is regretted; the paper was mislabeled when scanned for the image file wrapper. It is noted that applicant did not address the double patenting rejection of the previous Office Action.

8. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (703) 308-2568. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The fax number for all patent applications is (703) 872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the

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Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas J. Brahan
Primary Examiner
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